

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 FRANK AND DEBORAH MCDOWELL,

No. C 11-02569 CRB

12 Plaintiff,

**ORDER DENYING APPLICATION
FOR TEMPORARY RESTRAINING
ORDER**

13 v.

14 THE STATE OF CALIFORNIA,

15 Defendant.
16 _____/

17 Pro se plaintiffs Frank and Deborah McDowell have filed an application for a
18 Temporary Restraining Order in this case. See generally App. (dckt. no. 2). This application
19 is DENIED because it does not meet the requirements for relief. See generally Winter v.
20 Natural Res. Def. Council, Inc., 555 U.S. 7, 129 S.Ct. 365, 374, 172 L. Ed. 2d 249 (2008);
21 Alliance for Wild Rockies v. Cottrell, No. 09-35756, 2010 WL 3665149, *8 (9th Cir. Sept.
22 22, 2010).

23 In this Circuit “‘serious questions going to the merits’ and a hardship balance that tips
24 sharply toward the plaintiff can support issuance of an injunction, assuming the other two
25 elements of the Winter test are also met.” Alliance for the Wild Rockies, 622 F.3d at 1052.
26 Here, the Court recognizes that the balance of the hardship tips in favor of Plaintiffs, who
27 purport to face foreclosure, but they have not raised serious questions going to the merits, as
28 their application consists of less than a page and a half of conclusory statements (“THE

1 DEFENDANT [sic] ARE INCURRING SWEEPING PENALTIES FOR IMPROPER
2 HOME FORECLOSURE PRACTICES”) but includes no facts or arguments suggesting an
3 entitlement to relief. See dkt. 2 at 1 (emphasis in original).

4 Additionally, the Court notes that Plaintiffs have asserted that this case was removed
5 from state court – the docket describes docket number 1 as a “Notice of Removal” and, on
6 the Civil Cover Sheet, “Removed from State Court” is checked off. See dkt. 1. The Notice of
7 Removal also attaches various rulings from the California state courts. This Court is not an
8 appeals court for decisions of the state court. Nor can Plaintiffs remove their own action
9 from state court. See 28 U.S.C. §§ 1441, 1446. Had the case been improperly removed, the
10 Court would lack jurisdiction. However, as Plaintiffs are pro se in this case, the Court will
11 construe the document entitled “Notice of Removal” as a Complaint in this matter, over
12 which Plaintiffs assert that this Court has jurisdiction on the basis of the federal question
13 raised (a RICO claim). A case management conference will be scheduled shortly.

14 **IT IS SO ORDERED.**

15
16
17 Dated: May 31, 2011



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE